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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT		ATTORNEY DOCKET NO.
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EXAMINER	
NUTTER, N	
ART UNIT	PAPER NUMBER
153	11

DATE MAILED: 01/13/89

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 05 Dec 1988 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), ~~days~~ from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☐ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 18 - 39 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 18 - 39 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).

10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____. has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 18-39 are rejected under 35 U.S.C. 103 as being unpatentable over Hen.

The patent to Hen teaches the production of a latex composition which may be employed as a binder as cellulosic paper compositions. Note column 2 (lines 9-46) which teaches the relative proportions of monomers which may be employed and which correspond to those employed by applicants.

The patent to Hen teaches the production of a latex which may comprise a monovinylidene monomer, including styrene and its derivatives, an aliphatic conjugated diene, including butadiene and a,β -ethylenically unsaturated monomer including ethyl acrylate.

Since the relative proportions of monomers used by the reference overlap with those of the claims as, in claim 17, and since the product apparently has

"sufficient strength for necessary handling", the latex composition of the claims is deemed to be an obvious modification of the reference. The further manipulation of the Tg values or modulus of rupture as reflected by percentages of monomer proportions likewise are deemed to be of a mechanical nature. Employment of the latex composition in any composite, sheet or nonwoven, in its art recognized capacity, that is, as a binder, is deemed to be an obvious modification to a practitioner in the art, absent any showing of unexpected results. Finally, selection of suitable monomers, including styrene, butadiene, and α,β -ethylenically unsaturated monomers and their esters is manipulable to a practitioner in view of the monomers recited at column 2 (lines 9-46).

The monomers recited at column 2 (lines 9-46) and column 2 (lines 62) to column 3 (line 65) embrace those recited in the instant claims. Thus, the reference is deemed to anticipate in the sense of 35 U.S.C. 102(b) the instant claims.

Applicant's arguments filed 05 December 1988 have been fully considered but they are not deemed to be persuasive.

The Declarations have been considered but are not deemed to lend patentability to the claims. Applicants have not made any direct comparisons wherein the constituents overlap as is taught by Hen at column 2 (lines 9 et seq.). Applicants assert, but do not show, glass transition temperatures as high for acrylic acid

and styrene. Butadiene is alleged as low. Applicants employ fumaric acid in formulation A. Fumaric acid is itaconic acid and an isomer of maleic acid and is disclosed as usable by Hen at column 3 (lines 36 et seq.). Why did applicants not employ itaconic acid to make the closest comparison? Therefore, the comparison cannot be considered as valid, and the Affidavits fail to assert patentability of the instant claims over Hen.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

NNW
N.NUTTER:mh

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MORTON FOELAK
PRIMARY EXAMINER
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